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Supreme Court of the United States

October Term, 1962

No. 155

CLARENCE EARL GIDEON,
Petitioner,

vs.

H. G. COCHRAN, JR., Director, Division of Corrections,
Respondent.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE FLORIDA CIVIL LIBERTIES UNION, *AMICI CURIAE*

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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE FLORIDA CIVIL LIBERTIES UNION, *AMICI CURIAE*.

Interest of *Amici*.

The American Civil Liberties Union is a nationwide, non-partisan organization engaged solely in the defense of the Bill of Rights. Freedom of speech, due process of law, and the equal protection of the laws have been the Union's traditional concern.

This brief, filed with the consent of the parties, urges the Court to discard the doctrine of *Betts* v. *Brady*, 316 U. S. 455 (1942), as being out of harmony with the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The American Civil Liberties Union has asserted for many years that the Fourteenth Amendment can be satisfied only if the states are obliged in all cases to provide counsel for those persons accused of crime who are financially unable to retain counsel privately. Our brief sets forth the detailed bases on which that assertion rests.

Question Presented

Whether this Court's holding in *Betts* v. *Brady* should be reconsidered.

Statement of the Case

On June 19, 1961, the State of Florida charged petitioner, under an information, with the crime of feloniously breaking and entering a building with the intent to commit a misdemeanor (R. 1). On July 31, 1961, petitioner entered a plea of not guilty (R. 3). On August 4, 1961, the day of trial, petitioner asked that the court appoint counsel to represent him at trial. In denying the request, the trial court said,

> "Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense • • • " (R. 9).

The trial proceeded with petitioner acting as his own attorney. The jury brought in a verdict of guilty (R. 4) and petitioner was sentenced to imprisonment for five years (R. 5).

Petitioner filed a petition for a writ of habeas corpus in the Supreme Court of Florida on October 11, 1961 (R. 44-46). The petition alleged that petitioner was "a pauper without funds or any possibility of obtaining financial aid" (R. 45), and that the failure of the trial court to appoint counsel to represent him violated the Fourth, Fifth and Fourteenth Amendments (R. 46). The writ was denied on October 30, 1961 (R. 47). A writ of certiorari to the Supreme Court of Florida was granted on June 4, 1962 (R. 47).

Summary of Argument

The issue raised in this case was originally presented to this Court twenty years ago in the case of *Betts* v. *Brady*, 316 U. S. 455 (1942). Instead of requiring the appointment of counsel for all indigent criminal defendants, the Court in *Betts* ruled that only in capital cases was appointment of counsel to be required. In noncapital cases counsel was to be appointed only if "special circumstances" indicated that a trial without defense counsel would be unfair. The "special circumstances" rule has plagued both state and federal courts to the present day; it has operated neither to protect the rights of the accused nor to facilitate the sound and impartial administration of justice.

I

Despite the existence of the "special circumstances" rule, counsel is rarely appointed in noncapital cases, even if requested. Among cases in which no "special circumstances" were found and in which there was no review are many which have run counter to prior decisions of this Court. This unwillingness by state courts to appoint counsel has led to the conviction of apparently innocent defendants.

Even if a trial judge in a state criminal proceeding attempts in good faith to ascertain whether counsel should be appointed, he will have a difficult task because of the confusing and contradictory criteria that have been propounded over the years. Moreover, no judge can actually predict the course of a trial. Numerous decisions must be made in every trial, all or most of which are too difficult for any defendant without a lawyer at his side. These difficulties are compounded by the increasing complexity of the criminal law.

When the trial proves to be unfair, appeal or collateral attack are usually the only remedies open to the defendant. But these remedies at most afford the defendant a second chance for a fair trial if he can prove the first unfair. And the second chance occurs only after the lapse of many years during which he has been confined in prison.

II

One of the basic elements of due process is the right to a hearing. Because of the nature of our adversary system, the right to a hearing is of little value without the right to be heard by counsel. Despite this fact, the Court in *Betts* v. *Brady* drew a distinction between appointment of counsel in capital cases and noncapital cases. This distinction has no warrant in the language of the Constitution, in logic or in history. In other contexts this Court has refused to countenance the distinction between capital and noncapital crimes, and should similarly expunge the unjustified distinction in the present case.

In similar fashion, the rule evolved from *Betts* v. *Brady* creates an invidious distinction with respect to the quality of justice afforded the rich and the poor. If justice is to be equal and accessible for all, an opportunity must be provided for all accused, irrespective of their means, to have the assistance of counsel.

III

The "special circumstances" rule has congested both state and federal court dockets with complicated and time-consuming cases. Requiring the appointment of counsel for all indigent defendants would limit the grounds for appeal and collateral attack of state criminal convictions, overcome perplexing problems of judicial administra-

tion, and lessen the abrasive effect that the exercise of the federal habeas corpus jurisdiction has had upon state systems of criminal justice.

IV

Requiring the appointment of counsel will lead to substantial savings to society. The burden on the judiciary and prosecution from postconviction proceedings will be eased; delays in the administration of justice will be eliminated; and the cost of detention will be reduced. In addition, the expense of providing adequate representation to indigent defendants will be reasonable. Four basic systems of representation have been developed—assigned counsel, the voluntary defender, the public defender, and the mixed private-public system. The success of these systems in the states now employing them strongly suggests their similar success in the states which do not now provide legal assistance to indigents.

V

In *Mapp* v. *Ohio*, 367 U. S. 643 (1961), this Court held that the Fourteenth Amendment incorporated from the Fourth Amendment not only the abstract right to be free from unreasonable searches and seizures, but also the rule requiring the exclusion of evidence so seized. The constitutional development of the exclusionary rule is a compelling historical model for this Court to follow in ruling that the Fourteenth Amendment incorporates from the Sixth Amendment not only the abstract right to counsel, but also the rule applicable in federal courts under the Sixth Amendment requiring appointment of counsel in all cases where the indigent defendant is unable to secure the services of an attorney and has not competently waived his right to counsel.

ARGUMENT

Introduction

The issue presented in this case is whether the Fourteenth Amendment requires a State to furnish counsel to an indigent defendant in every criminal case in which he has not intelligently and competently waived the right to legal assistance.

Twenty years ago, the identical issue was presented in *Betts* v. *Brady*, 316 U. S. 455 (1942). The rule developed by the Court in *Betts* has plagued both federal and state courts to the present day. Under that rule, appointment of counsel is required in capital cases (see *Bute* v. *Illinois*, 333 U. S. 640, 676 (1948)), but in noncapital cases state courts may deny counsel, even upon request of the defendant, unless such denial would constitute a "denial of fundamental fairness, shocking to the universal sense of justice" (*Betts* v. *Brady*, *supra*, 316 U S. at 462), or unless there are "special circumstances showing that without a lawyer a defendant could not have an adequate and fair defense" (*Palmer* v. *Ashe* 342 U. S. 134, 135 (1951)).

The *amici* believe that the Due Process and Equal Protection Clauses accord to every criminal defendant in this country a right to legal assistance at trial. Hence, no defendant may be denied a lawyer unless he intelligently and competently waives this right.

The "special circumstance" rule enunciated in *Betts* has been a failure. It was illegitimate at its inception because it was based on a distinction between capital and noncapital crimes that had no warrant in the Constitution or in prior decisions of this Court. The rule has operated neither to protect the rights of those accused of crime nor to facilitate the sound and impartial administration of justice. It has, moreover, led to a spate of unjust results in state criminal cases, and perhaps worst of all, it has drawn and perpetuated an invidious line between the con-

stitutional protections accorded the rich and those accorded the poor. The "special circumstances" rule of *Betts* v. *Brady* is therefore incompatible with the Due Process and Equal Protection Clauses.

Due process is a standard of basic fairness which does not admit of precise definition. In *Palko* v. *Connecticut*, 302 U. S. 319, 325 (1937), Justice Cardozo described it as including all that is "implicit in the concept of ordered liberty." Or, as the Court said in *Powell* v. *Alabama*, 287 U. S. 45, 67 (1932), with specific reference to the right to counsel, the question is whether

> "[T]he right involved is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.' . . . ."

Applying this broad language, the Court has employed various methods of analysis for determining whether any particular practice violates the Due Process Clause. One way of analyzing "due process" is to examine the effect upon the individual defendant to determine whether the practice is fundamentally unfair or shocking to the conscience. Another is to measure the challenged practice against contemporary community standards. Finally, "due process" may be viewed as incorporating a set of specific guarantees, including the right to a hearing and the right to be free from invidious discriminations between classes of persons. By any of these standards, as this brief will demonstrate, every criminal defendant has a right to counsel in every case.

I

Denial of counsel to criminal defendants is fundamentally unfair.

The fundamental unfairness of a rule which permits a state to deny counsel to criminal defendants can best be illustrated by considering how the rule operates in practice from the commencement of the trial to the period after trial when the defendant tries to avail himself of post-conviction remedies. The unfairness is compounded in practice by the inequities and uncertainties of the "special circumstances" rule. These inequities and uncertainties can be eliminated only by an objective rule requiring appointment of counsel in every case.

A. The Cases Decided Since *Betts* v. *Brady* Demonstrate That Legal Assistance Is Improperly Denied to Many Defendants Entitled to Counsel under the "Special Circumstances" Rule.

The cases decided in this Court since *Betts* v. *Brady* that have dealt with a state court's application of the "special circumstances" rule reveal that even though governing decisions of this Court clearly indicated the defendant's right to legal assistance, a defendant may not be informed of his right to counsel, never request counsel, and never have one appointed. See *Uveges* v. *Pennsylvania*, 335 U. S. 437 (1948).

Other cases disclose that even where the defendant requests appointment of counsel, the trial judge may deny the request without further inquiry. Thus, in the instant case the following colloquy took place (R. 9):

> "The Defendant: Your Honor, I said: I request this Court to appoint Counsel to represent me in this trial.
>
> The Court: Mr. Gideon, I am sorry, but I cannot

> appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case."

Assistance of counsel has also been denied even though it was clear that appointment was necessary in view of the defendant's age, mental condition and education, the complex nature of the charge, and the likelihood that the trial would be unfair under all circumstances. Thus, in *Moore v. Michigan*, 355 U. S. 155 (1957), the petitioner, a 17 year old Negro with a 7th grade education and possible mental defects, was arrested for the murder of an elderly lady. The petitioner was questioned for two days until he orally confessed. The next morning he was arraigned. Without counsel to assist him, he pleaded guilty, was adjudged guilty of murder in the first degree, sentenced to life imprisonment, and transferred to prison immediately. Similarly, in *DeMeerleer v. Michigan*, 329 U.S. 663 (1947), the petitioner, also 17 years of age, was charged with murder, arraigned, tried, convicted, and sentenced to life imprisonment all on the same day. He was without legal assistance throughout these proceedings and was never advised of his right to counsel.

Among the state court cases in which no special circumstances were found and which were not reviewed here are many which run counter to prior decisions of this Court. See Appendix II, pp. 48-49, *infra*. The defendants in these cases should have had counsel appointed as soon as their age, education and mental condition were made apparent to the state court.

Thus, in *Shaffer v. Warden, Maryland House of Correction*, 211 Md. 635, 126 A. 2d 573 (1956), it was held that a 19 year old defendant, of below average mental capacity and with a congenital speech defect, was not deprived of due process in being required to plead to an indictment for

burglary. His claim that he had in fact pleaded "not guilty" but was misunderstood by the trial court was rejected by the state appellate courts. Compare this Court's ruling in *Uveges* v. *Pennsylvania, supra*, which was not referred to by the state court. In *Commonwealth ex rel Ringer* v. *Maroney*, 177 Pa. Super. 509, 110 A. 2d 801 (1955), *cert. denied*, 350 U. S. 916 (1956), an illiterate moron with only a third grade education was convicted of arson without benefit of counsel. Compare this Court's ruling in *Palmer* v. *Ashe, supra*, which was not referred to by the Pennsylvania Supreme Court. See also *Butler v. Culver*, 111 So. 2d 35 (Fla. 1959); *Fisher* v. *State*, 11 So. 2d 806 (Miss. 1943). And see *Commonwealth ex rel Simon* v. *Maroney*, 195 Pa. Super. 613, 171 A. 2d 889 (1961) *petition for certiorari pending*, in which the defendant, aged 18, with an I.Q. of 59 and almost no education, was convicted of rape and robbery without benefit of counsel.

The unwillingness of state courts to appoint counsel can often lead to the conviction of apparently innocent defendants. Thus, in *Parker* v. *Ellis*, 362 U. S. 574 (1960), a 67 year old man was convicted of forgery in a Texas court without the assistance of counsel and was sentenced to 7 years imprisonment. His repeated attempts to obtain release through collateral proceedings were unsuccessful. Finally, a petition for certiorari was granted by this Court. It was subsequently dismissed as moot when it appeared that the petitioner had been released from prison after serving five years. The critical facts are contained in the dissenting opinion of the Chief Justice (362 U. S. at 578-79):

> "[His] trial was a sham. Although the testimony directly bearing on the issue of forgery was not strong [since the woman on whose account the check was drawn was never called as a witness], petitioner's conviction is hardly surprising, for the prosecution's case consisted in large part of a potent melange of assorted types of inadmissible evidence

> —introduced without objection by petitioner. But petitioner suffered as much from errors of omission as he did from errors of commission. Petitioner now alleges—and respondent does not deny—that the victim of the alleged forgery was petitioner's mother-in-law and that the principal prosecution witness was his brother-in-law, a 'bitter enemy'; but petitioner introduced no evidence to this effect at the trial. Nor is this strange, for petitioner's halting attempts to defend himself discloses utter ineptness in the courtroom."

Similarly, in *Pennsylvania ex rel Herman v. Claudy*, 350 U. S. 116 (1956), the petitioner, 21 years of age with only six years of schooling, pleaded guilty without assistance of counsel to 8 charges of burglary, 12 charges of larceny, 8 of forgery and 2 of false pretense. He was sentenced to 17½ to 35 years. This Court ordered hearings on a petition for habeas corpus which alleged that after his arrest the petitioner had been held incommunicado for three days, during which time a "state trooper grabbed him by the neck and threatened to choke him if he did not confess." It was also claimed that "there were threats against the safety of his wife and daughter", and that when the assisting prosecuting attorney demanded that he sign a plea of guilty to all charges, and the petitioner asked what he was signing, he was told "sign your name and forget it" (350 U. S. at 119). See also *Palmer v. Ashe, supra.*

B. The "Special Circumstances" Rule Has Developed Such Contradictions and Inconsistencies that It Provides No Proper Guidance to Lower Courts Attempting to Apply It Fairly.

Even if a trial judge in a state criminal case attempts in good faith to ascertain whether counsel should be appointed because of "special circumstances", he will find the criteria for decision laid down by this Court are confusing and contradictory and do not permit even-handed

and fair application of the rule. As the Attorney General of Pennsylvania said in his brief before this Court (p. 40) in *Gibbs* v. *Burke*, 337 U. S. 773 (1949):

> "The practical effect upon local administrative law of the decisions which interpret the Fourteenth Amendment cannot be minimized. No state court should be required to guess in advance of the time when a case is called for trial whether the matter coming before it is of such character that the appointment of counsel is demanded. As a practical matter it cannot be done."[1]

The "capriciousness" of the standard for appointment of counsel may be seen in "the records of the right-to-counsel cases since *Betts* v. *Brady* in both state and federal courts. * * *" *Carnley* v. *Cochran*, 369 U. S. 506, 519 (1962) (Black, J. concurring). Thus, although in *DeMeerleer* v. *Michigan, supra*, and in *Uveges* v. *Pennsylvania, supra*, the Court noted that a defendant's age was a crucial criterion, in *Gayes* v. *New York*, 332 U. S. 145 (1947), and in *Canizio* v. *New York*, 327 U. S. 82 (1946), the failure to appoint counsel at trial was upheld even though the defendants were 16 and 19 years old, respectively.

Similarly, in *Foster* v. *Illinois*, 332 U. S. 134 (1947), the defendants, without benefit of counsel, were arraigned and sentenced after a plea of guilty all on the same day. This Court found that the defendants understood the effect of their plea and thus waived their right to counsel. Yet in the same year, in *DeMeerleer* v. *Michigan, supra*, virtually the same fact situation produced a reversal and new trial. A comparable inconsistency is revealed in this Court's treatment of habitual offender statutes. Compare

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[1] See *Raymond* v. *State*, 192 Md. 602, 611, 65 A. 2d 285, 288-89 (1949), in which the court noted that recent decisions of this Court "have not dispelled the confusion" concerning the appointment of counsel.

Gryger v. *Burke*, 334 U. S. 728 (1948), with *Chewning* v. *Cunningham*, 368 U. S. 443 (1962).

The very factors to be considered often seem contradictory. Thus in *Gryger* v. *Burke*, *supra*, and in *Quicksall* v. *Michigan*, 339 U. S. 660 (1950), the prior experience of the defendants in the criminal courts was weighed *against* their right to have counsel appointed. See also *Betts* v. *Brady*, *supra*, 316 U. S. at 472. However, this Court has recently indicated that prior convictions are to be considered *in support of* a claim to be represented by counsel because a defendant is placed in a quandary whether to testify on his own behalf and thereby risk the possibility that his criminal record will be brought out on cross-examination or, on the other hand, to remain silent and thereby risk a negative inference of guilt. See *Carnley* v. *Cochran*, *supra*, 369 U. S. at 511. Counsel is necessary to assist him in making this decision.

If the same factor has been weighed both for and against a defendant's right to counsel by this Court, surely the difficulties experienced by the lower state and federal courts in attempting to decide whether the appointment of counsel is required are understandable. See Beaney, *The Right to Counsel in American Courts*, 194-95 (1955).

C. The Complex and Unpredictable Course of Criminal Trials Further Demonstrates the Unfairness of Denying Any Defendant the Assistance of Counsel.

Even if trial judges scrupulously attempted to apply the "special circumstances" rule, and even if the criteria for the application of that rule were not contradictory, the rule would in many cases operate unfairly to indigent defendants. It is not possible to predict the actual course of a criminal trial or the defendant's response to a novel, confusing and harrowing experience—acting as his own lawyer in defense of his liberty against the efforts of an experienced prosecutor to convict him.

The difficulties experienced by the unassisted defendant were recognized in *Powell* v. *Alabama, supra*, 287 U. S. at 69:

> "Even the intelligent and the educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence which is irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him."

Some idea of the burden on the defendant unaided by counsel can be obtained by following him through a trial and considering the enormous number of difficult legal decisions he has to make.

After an indictment is returned, should the indigent defendant challenge the indictment because it does not allege the essential elements of the crime or because it contains prejudicial material or because the grand jury was not properly impaneled? Should he request a bill of particulars or a list of witnesses from the prosecution? Should he object to the venue of trial because of inflammatory feeling in the community or because the crime was not committed within the jurisdiction? Should he attack the empaneling of the petit jury because of exclusion of certain racial groups from the lists or, if not, which jurors should he challenge for cause or peremptorily?

At trial many other difficult decisions must be made. When the prosecution presents its case, should the defendant move to exclude any evidence because it was illegally seized or obtained by wiretapping or eavesdropping? Should he object to hearsay evidence or protest

the competency of any prosecution witnesses? Which of these witnesses should he cross-examine or try to impeach and on what basis? Should he take the stand himself and risk exposure of a prior criminal record or remain silent and run the risk that a jury will infer guilt from his failure to testify? Should he raise a defense of insanity and, if so, what must he prove? Should he object to the judge's instructions to the jury? If he is found guilty, how can he reverse the jury's verdict? How should he perfect his appeal and what papers must be filed or exceptions taken to preserve legal points on appeal?

That these decisions are too much for any defendant without a lawyer at his side was recognized by the Association of the Bar of the City of New York in its special study on *Equal Justice for the Accused*, 35 (1959):

> "Decisions may have to be taken as to whether it is advisable to request permission to appear before the grand jury; whether the indictment or information should be tested by a preliminary motion; and whether the accused should go to trial or offer to plead, perhaps to a lesser charge. If it is decided that the case is to be tried, counsel must undertake the complex of activities entailed in preparing for and conducting the defense. This may involve consideration of the advisability of waiving jury trial, the preparation of legal arguments, the search for witnesses, the cross-examination of the prosecution's witnesses, and a decision as to whether to put the accused on the stand."

The difficulties imposed on the defendant in making each of the above decisions, any one of which could spell the difference between conviction and acquittal, are compounded by the increasing complexity of substantive and procedural criminal law. The common law crimes are giving way to modern codifications; new crimes unheard of in a less advanced technological setting have been enacted; the impact of science on crime detection has revolutionized the law of evidence; and the protections of the

accused against improper police methods, which were still embryonic in 1942 when *Betts* v. *Brady* was decided, have become one of the principal and most complex features of the criminal process.

The obstacles placed before a man without a lawyer are accentuated by recently recognized defenses based upon the Constitution. Thus, convictions unsupported by evidence are invalid under the Due Process Clause of the Fourteenth Amendment. *Thompson* v. *City of Louisville*, 362 U. S. 199 (1960). The Cruel and Unusual Punishment Clause has been infused with new vigor. *Robinson* v. *California*, 370 U. S. 660 (1962). The defendant's right to testify and be cross-examined has been reaffirmed. *Ferguson* v. *Georgia*, 365 U. S. 570 (1961). And defenses relating to double jeopardy (see *Bartkus* v. *Illinois*, 359 U. S. 121 (1959)) and "immunity" statutes (see *Ullmann* v. *United States*, 350 U. S. 422 (1956); *Knapp* v. *Schweitzer*, 357 U. S. 371 (1958)), are in uncertain flux.

Increasingly intricate evidentiary rules—many being outgrowths of judicial attempts to control police conduct—illustrate further the need for a lawyer. Thus, although the leading case requiring exclusion of a coerced confession (*Brown* v. *Mississippi*, 297 U. S. 278 (1936)) was decided only six years prior to *Betts* v. *Brady*, the law relating to confessions has developed rapidly since *Betts* both under the Due Process Clause and under state law. See Ritz, *Twenty-Five Years of State Criminal Confession Cases in the U. S. Supreme Court*, 19 Washington & Lee L. Rev. 35 (1962). Analogous problems are presented by *Rochin* v. *California*, 342 U. S. 165 (1952) and *Breithaupt* v. *Abram*, 352 U. S. 432 (1957). And efforts by state police to hold defendants incommunicado after arrest present difficult questions under state law as well as the Federal Constitution. See *Culombe* v. *Connecticut*, 367 U. S. 568 (1961); *Crooker* v. *California*, 357 U. S. 433 (1958); cf. *McNabb* v. *United States*, 318 U. S. 332 (1943).

Mapp v. *Ohio*, 367 U. S. 643 (1961), requires illegally seized evidence to be excluded from state trials. Every practitioner in the criminal courts knows that the law of search and seizure is of the utmost variety and subtlety. It is complicated by the use of evidence obtained by scientific methods of crime detection, such as wiretapping, electronic eavesdropping, and lie detectors. The scope of the *Mapp* rule is uncertain. Can it reasonably be expected that the unassisted layman will be able to protect his right under the Fourteenth Amendment to have unlawfully seized evidence excluded? We submit that the answer is obviously no.

In view of the above facts, it is not surprising that this Court has recently recognized that "even in the most routine-appearing proceedings the assistance of able counsel may be of inestimable value" (*Reynolds* v. *Cochran*, 365 U. S. 525, 532-33 (1961)) because "the labyrinth of the law is, or may be, too intricate for the layman to master" (*Chewning* v. *Cunningham*, *supra*, 368 U. S. at 446). Thus, in nine of the right to counsel cases decided by this Court since 1942—six of them in the last three years—state criminal convictions have been reversed either wholly or partially because of a finding that the trial was so complex as to require the assistance of counsel.[2] These cases were not exceptional; nor did they present especially abstruse or technical legal questions. Typical of these cases was *Williams* v. *Kaiser*, 323 U. S. 471 (1945), which involved the trial of a defendant for robbery with a deadly weapon. In reversing the conviction, the Court stated (323 U. S. at 474-76):

> "The law of Missouri has important distinctions between robbery in the first degree, robbery in the second degree, grand larceny, and petit larceny.

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[2] *Williams* v. *Kaiser*, 323 U. S. 471 (1945); *Rice* v. *Olson*, 324 U. S. 786 (1945); *Gibbs* v. *Burke*, 337 U. S. 773 (1949); *Cash* v. *Culver*, 358 U. S. 633 (1959); *Hudson* v. *North Carolina*, 363 U. S. 697 (1960); *McNeal* v. *Culver*, 365 U. S. 109 (1961); *Reynolds* v. *Cochran*, 365 U. S. 525 (1961); *Chewning* v. *Cunningham*, 368 U. S. 443 (1961); *Carnley* v. *Cochran*, 369 U. S. 506 (1962).

> These involve technical requirements of the indictment or information, the kind of evidence required for conviction, the instruction necessary to define the several elements of the crime, and the various defenses which are available. These are a closed book to the average layman. * * * A layman is usually no match for the skilled prosecutor whom he confronts in the courtroom. He needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity, or of his own ignorance or bewilderment."

The foregoing should make it plain that the modern trial is of such complexity that any defendant is at a hopeless disadvantage in coping with the problem of defending himself without the aid of a lawyer. It is unfair and a violation of the Due Process Clause to permit a state to require him to do so.

D. The Ineffectiveness of Post-Conviction Remedies Demonstrates the Need for the Appointment of Counsel Initially at Trial.

As seen above, "special circumstances" requiring the appointment of counsel may arise only after the trial has begun. Hence, the rights of defendants under the "special circumstances" rule can be protected only if, once such circumstances become apparent, a new trial is immediately ordered at which the defendant is represented by counsel. But no case has been found in which a court, seeing the possibility of unfairness during trial, has halted the proceeding so that counsel could be appointed. Instead, courts permit the unfair trial to run its course and leave to an appellate tribunal or to a court exercising habeas corpus jurisdiction the question whether constitutional or other error occurred at the trial.

But these post-conviction remedies are unsatisfactory. They do not provide due process—at most they give the defendant a second chance for a fair trial if he can prove the first unfair. They do not grant him the right to a fair

trial initially. More often, they do not even permit the possibility of a second trial. This is so because of the overriding handicaps which a defendant must surmount if he attempts to rectify error committed at trial.

If conviction follows after a trial with no defense counsel, it is rare that counsel can be obtained to prosecute an appeal.[3] And since an effective appeal is unlikely without a lawyer, errors occurring at trial are never brought to the attention of an appellate court in many cases. The vast number of habeas corpus petitions filed in state and federal courts which raise new and substantial legal contentions demonstrate the frequency with which this unfortunate pattern occurs.

If the defendant desires relief after the time for appeal has run, he must educate himself sufficiently in the law (or somehow acquire a lawyer) so as to be able to press his claims through one of the state post-conviction remedies. But state courts rarely grant relief on the ground that a trial was unfair because of lack of counsel. As pointed out in Appendix II, *infra*, pp. 48-49, of 139 state decisions on the issue whether "special circumstances" existed, in only 11 did the court rule that the trial judge had committed error in failing to appoint counsel.

The next step is to petition this Court for certiorari, which is usually denied, often because there was no hearing granted in the state courts that would have revealed the possible validity of a constitutional claim. If the defendant is denied relief in the state courts, he will next try to vindicate his rights by applying for habeas corpus in a federal district court. There, again ordinarily without counsel, he will often be denied a hearing on his allegations or, if a hearing is granted, he may be denied relief on the merits. The defendant then will seek review in a federal

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[3] Of the 139 state decisions only 34 were presented to a state court on direct appeal from the conviction. See Appendix II, *infra*, pp. 48-49.

appellate court, carrying the heavy burden of first obtaining a certificate of probable cause and then persuading this tribunal that his claims are meritorious and that a new trial should be ordered.

The interplay of procedural rules with the denial of counsel under *Betts* v. *Brady* is especially unfair. In most states the defendant must file timely exceptions to rulings made at the trial, and failure to do so results in loss of appellate review or state post-conviction remedies. See *Irvin* v. *Dowd*, 359 U. S. 394 (1959). A procedural slip by the unassisted defendant in the state courts may also preclude the federal courts from considering the merits of a constitutional claim. See generally Reitz, *Federal Habeas Corpus: Impact of an Abortive State Proceeding*, 74 Harv. L. Rev. 1315 (1961). Moreover, no federal habeas corpus review is available to a defendant who does not exhaust state remedies, including appellate review in the state courts and the filing of a petition for certiorari with this Court. See *Darr* v. *Burford*, 339 U. S. 200 (1950).

No exception is made to any of these procedural rules with respect to a defendant who is denied counsel under *Betts* v. *Brady*. The result is that the unrepresented defendant, who cannot be expected to know about these rules, is very likely to lose the only chance of obtaining review of his conviction. Indeed, if the defendant is improperly denied counsel, he may find the doors to both state and federal courts entirely closed to him because of a procedural flaw which is the direct result of the absence of a lawyer—the precise deprivation for which he seeks review.

It is of course possible that at one stage or another an unassisted defendant will be able to overcome the procedural pitfalls and the vast obstacles of proof and satisfy some court that he was convicted without a fair trial. But if this ever occurs, it is generally years after his conviction that the defendant obtains a new trial or, in rare cases, his freedom—debasing years which he has spent in confine-

ment resulting from an unjust trial.[4] Thus, in *Moore* v. *Michigan*, 355 U. S. 155 (1957), 19 years elapsed between the petitioner's unconstitutional trial and vindication of his claim in this Court; in *DeMeerleer* v. *Michigan*, *supra*, 15 years elapsed; in *Uveges* v. *Pennsylvania*, *supra*, 10 years elapsed; and in *Massey* v. *Moore*, 348 U. S. 105 (1954), 14 years elapsed before the original trial was invalidated because of the lack of counsel (see 133 F. Supp. 31 S. D. Tex. 1955)).[5]

The practical result of the "special circumstances" rule is to place an intolerable burden on a criminal defendant who comes into court without the assistance of counsel. He has great difficulty in obtaining assigned counsel, even if he is legally entitled to one under the confusing criteria that purport to guide state courts. He cannot adequately prepare his own case since he is almost always without funds for bail. He must guide himself through the innumerable traps of a confusing trial. If convicted, he must immediately appeal on his own and, in the usual case, try

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[4] That the ultimate result of a new trial may prove that the defendant was guilty is, of course, of no consequence. As Judge (now Mr. Justice) Stewart has observed, in approving the dissenting opinion in an earlier case: "'When a defendant has been denied due process, his guilt or innocence is irrelevant. He has not been tried by civilized standards, and cannot be punished until he has been.'" (*Henderson* v. *Bannan*, 256 F. 2d 363, 388 (6th Cir. 1958) dissenting opinion).)

[5] See also *Garton* v. *Tinsley*, 171 F. Supp. 387 (D. Colo. 1959) (14 years); *United States ex rel. Stone* v. *Randolph*, 165 F. Supp. 284 (E. D. Ill. 1958) (15 years); *Pennsylvania ex rel. Woods* v. *Cavell*, 157 F. Supp. 272 (W. D. Pa. 1957), *aff'd* 254 F. 2d 816 (3d Cir. 1958) (10 years); *Muldread* v. *Bannan*, 137 F. Supp. 533 (E. D. Mich. 1956) (2 years); *Petition of Bland*, 139 F. Supp. 900 (S. D. Tex. 1955) (6 years); *Johns* v. *Overlade*, 122 F. Supp. 921 (N. D. Ind. 1953) (7 years); *Todd* v. *Dowd*, 100 F. Supp. 485 (N. D. Ind. 1949) (2 years); *United States ex rel. Mills* v. *Ragen*, 77 F. Supp. 15 (2 years); *United States ex rel. Mills* v. *Ragen*, 77 F. Supp. 15 (N. D. Ill. 1948) (3 years). See also *Hawk* v. *Hann*, 103 F. Supp. 138 (D. Neb. 1952) (16 years).

to make his way through the maze of state post-conviction remedies. If unsuccessful in the state courts, he must seek review in this Court and, most likely, start anew in a federal district court. If he is somehow fortunate enough to have his claims heard, and his release or a new trial is ordered, it is usually after the lapse of long years during which he has been confined to prison. Surely the Fourteenth Amendment does not permit such a tortuous path to a fair trial.

II

Denial of counsel to criminal defendants contravenes the other standards embodied in the Fourteenth Amendment.

A. Denial of Counsel Abridges the Right to a Hearing.

In *Powell* v. *Alabama, supra*, 287 U. S. at 68, the Court said that "notice and hearing * * * constitute basic elements of the constitutional requirement of due process of law." This principal has often been reaffirmed by this Court. A criminal trial without a defense lawyer, however, is not a "hearing." It is a mockery and a sham, designed to obtain the speediest possible conviction for the State, whose full power is arrayed against the defendant. As the Court stated in *Powell*, "the right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel" (*id.* at 68-69).

Any attempt to probe the issue of guilt or innocence is not meaningful in the absence of a defense lawyer, and the chances of acquittal for the lawyerless defendant are negligible. As Mr. Justice Stewart pointed out in *Cash* v. *Culver*, 358 U. S. 633, 638 n. 7 (1959):

> "The very fact that the jury failed to convict at the first trial, when the petitioner was represented by counsel, is at least some practical indication of the difference a lawyer's help at the second trial might have made."

If a defendant has a due process right to be cross-examined (see *Ferguson v. Georgia*, 365 U. S. 570 (1961)) he surely has a right to the presence of a lawyer who can do the cross-examining.

Our system of justice depends upon the active participation of trained counsel on both sides—of persons who meet the rigid qualifications necessary for admission to the bar. This is the essence of our adversary system. Lawyers are not superfluous appendages in the criminal process.

That a trial without a defense lawyer does not constitute a "hearing" in the due process sense is further evidenced by the fact that a court itself cannot act in the role of counsel for the accused. "[A] judge, whose functions are purely judicial," the Court stated in *Powell v. Alabama*, cannot "effectively discharge the obligations for the accused"; although the judge may see to it that the accused "be dealt with justly and fairly," he cannot "investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional" (287 U. S. at 61).

The contrast between a prisoner protected at trial by the judge alone and a prisoner represented by counsel was graphically described in 1826 by Justice Joseph Story in a letter to an English member of parliament:

> "It is in vain to tell me that a Judge is, or can be in any just sense, counsel for the prisoner. There are many distinctions, many principles of construction, many illustrations of evidence, many debatable points which, supposing him alive to every cause, always learned, always seeking for light, will elude the grasp of his mind. And after all, how much is gained with a Jury by an advocate, who has sifted all the facts with a cautious and persevering vigilance, and who brings the feelings of his client in aid of a professional duty. I have been a Judge

> fourteen years, and my experience has never led me to doubt the advantage of counsel to prisoners. I have often been instructed by them, and have seen the cause in other and better lights by their labors. Above all, I have seen the public follow convictions, after such appeals from counsel, with a ready and prompt satisfaction of mind. Surely no wise Government can wish to procure convictions where reasonable doubts may weigh with a jury." I William Story, *Life and Letters of Joseph Story* 490 (1851).

B. The Distinction Between Capital and Noncapital Cases With Respect to a Defendant's Right to Counsel Has No Proper Constitutional Basis.

The distinction drawn in *Betts* v. *Brady* between the appointment of counsel in capital cases and that in noncapital cases has no warrant in the language of the Constitution. As Mr. Justice Black said in his concurring opinion in *Carnley* v. *Cochran, supra,* 369 U. S. at 519-20: "[The] Fourteenth Amendment protects life, liberty, and property" and "defendants prosecuted for crime are entitled to counsel whether it is their life, their liberty, or their property which is at stake in a criminal prosecution."

Apart from the language of the Fourteenth Amendment, there is no logical reason to draw a constitutional line between capital and noncapital cases with respect to the right of defendants to be represented by counsel. This is not to overlook the finality of a sentence to death. It is merely to recognize what is well known—that a life sentence for a fixed number of years can have the same ultimate effect as a death sentence. The defendant may never emerge from prison a free man and, even if he does, he may be a broken relic of the person who entered years before. This explains the persistent speculation about the relative severity of the death penalty and a long prison sentence, particularly when the latter is meted out to a defendant of advanced years or to one who is ineligible for parole.

This Court in other contexts has refused to countenance a distinction between capital and noncapital criminal cases. In *Reid* v. *Covert*, 354 U. S. 1 (1957), the Court ruled that civilian dependents of members of the Armed Forces overseas could not constitutionally be tried by a court martial in time of peace for capital offenses committed abroad. Three years later, when a noncapital criminal case arose involving a civilian dependent of a member of the Armed Forces serving abroad, the Government vigorously contended that *Reid* v. *Covert* should be limited to capital cases. That contention was rejected. The Court held that there was no warrant in the language of the Fifth or Sixth Amendments, in constitutional history, or in the probable consequences for military discipline to draw the proposed line. *Kinsella* v. *United States ex rel. Singleton*, 361 U. S. 234 (1960).

In *Griffin* v. *Illinois*, 351 U. S. 12 (1956), the Court refused to accept a distinction between capital and noncapital criminal cases. Illinois provided free trial transcripts for purposes of appellate review to all indigent defendants sentenced to death, but required all other convicted defendants to purchase the transcripts themselves. The Court held that the Fourteenth Amendment required the state to provide some manner of effective review to indigent defendants whether or not they had been sentenced to death. And in *Ferguson* v. *Georgia*, 365 U. S. 570, 596 (1961), the Court explicitly stated that its decision "[did] not turn" on the fact that the appellant was tried for a capital offense, thus recognizing again that fundamental constitutional protections are applicable in all criminal cases.

Similarly in the present case, the Court should expunge the unjustified distinction between capital and noncapital crimes that was improperly imported into the law by *Betts* v. *Brady* without any warrant.

C. The Net Effect of *Betts* v. *Brady* is to Discriminate Unfairly Against Criminal Defendants Who Are Poor.

In *Edwards* v. *California*, 314 U. S. 160, 184-85 (1941), Mr. Justice Jackson observed in a concurring opinion:

> "'Indigence' in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color."

The Justice considered it necessary to make this statement because in the early history of the Court the poor were stepchildren of the law, with limited rights and privileges. Although *City of New York* v. *Miln*, 11 Pet. 102, 142 (1837), was subsequently overruled, the infamous reference in that case to "the moral pestilence of paupers" was to project its influence well into the Twentieth Century.[6]

Although poverty is no longer equated with viciousness or with inferior status, the rule of *Betts* v. *Brady* persists as a grim reminder of the inequities of the past and as the law we are required to live by. The individuals in the state courts who are unable to secure counsel are ordinarily poor and without family. They are people who are least able to protect their personal liberty even when life imprisonment may be at stake. As Mr. Justice Douglas stated in his concurring opinion in *McNeal* v. *Culver*, 365 U. S. 109, 118 (1961):

> "The result of our decisions is to refuse a State the power to force a person into a criminal trial without a lawyer if he wants one and can afford to hire one, but to deny the same protection to an accused who is too poor to retain counsel. This draws a line between rich and poor that is repugnant

[6] For a concise and thoughtful analysis of the impediments to even-handed distribution of criminal and civil justice, see the concurring opinion of the late Judge Jerome Frank in *United States* v. *Johnson*, 238 F. 2d 565, 567 (2d Cir. 1956), reversed, 352 U. S. 565 (1957). See also DORSEN, *The Rich, the Poor, and Equal Justice, The Village Voice*, July 19, 1962, p. 4.

> to due process. The need of counsel is the same, whatever the economic status of the accused. If due process requires that a rich man who wants a lawyer be allowed the opportunity to obtain one before he is tried, why should not due process give the same protection to the accused who is indigent? Even penniless vagrants are at times caught in a tangle of laws that only an astute lawyer can resolve, as our own decisions show."

That the size of a man's purse has no constitutional relevance in the administration of the criminal law is made strikingly evident by *Griffin* v. *Illinois*, *supra*. Although Illinois afforded every defendant convicted in a criminal trial a right of review, it allowed full appellate review only when its appellate court was furnished with a report of the trial proceedings. It was sometimes impossible to fulfill this requirement without a stenographic record of the trial, which was furnished free only to indigent defendants sentenced to death. The petitioners, who had been sentenced to prison for armed robbery, contended that they were denied rights under the Fourteenth Amendment because the State would not provide them with a transcript of the trial, and they could not therefore take an appeal. This Court agreed, ruling that the State that grants appellate review cannot do so in a way that "discriminates against some convicted defendants on account of their proverty." (351 U. S. at 18). As Mr. Justice Black stated (*id.* at 17):

> "Surely no one would contend that either a State or a Federal Government could constitutionally provide that defendants unable to pay court costs in advance should be denied the right to plead not guilty or to defend themselves in court. Such a law would make the constitutional promise of a fair trial a worthless thing. Notice, the right to be heard, and the right to counsel would under such circumstances be meaningless promises to the poor. In criminal trials a state can no more discriminate on account of poverty than on account of religion, race or color."

In concurring in the conclusion that a state was powerless to produce "a squalid discrimination" based upon "lack of means" (*id.* at 24), Mr. Justice Frankfurter said (*id.* at 23):

> "Of course a State need not equalize economic conditions. A man of means may be able to afford the retention of an expensive, able counsel not within reach of a poor man's purse. Those are contingencies of life which are hardly within the power, let alone the duty of a State to correct or cushion. But when a State deems it wise and just that convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons, forsooth erroneously convicted, from securing such a review merely by disabling them from bringing to the notice of an appellate tribunal errors of the trial court which would upset the conviction were practical opportunity for review not foreclosed."

Smith v. *Bennett*, 365 U. S. 708 (1961), is a further and more recent example of the determination of this Court not to permit an individual's means to prescribe the quality of justice he receives. Iowa law required the payment of statutory filing fees by state prisoners before an application for a writ of habeas corpus could be made or an appeal docketed in such cases. This test was struck down as violative of the Fourteenth Amendment, the Court saying that "to interpose any financial consideration between an indigent prisoner of the state and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws." (365 U. S. at 709).[7]

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[7] See also *Eskridge* v. *Washington State Board*, 357 U. S. 214 (1958); *Ross* v. *Schneckloth*, 357 U .S. 575 (1958); *Burns* v. *Ohio*, 360 U. S. 252 (1959); *Douglas* v. *Green*, 363 U. S. 192 (1960); and *McCrary* v. *Indiana*, 364 U. S. 277 (1960), in which comparable state rules and practices that effectively limited the poor person's access to courts ostensibly open to all, were also found to be constitutionally invalid.

The above decisions, as well as the obvious inequities of any distinction based on means, require the demise of the rule of *Betts* v. *Brady*. If "the Fourteenth Amendment weighs the interest of rich and poor criminals in equal scale" (*Smith* v. *Bennett*, *supra*, 365 U. S. at 714), surely it does so whether it is appellate review that is sought or whether it is a fair trial that is sought in the first instance. That the standard of fundamental fairness, embodied in the Due Process and Equal Protection Clauses, has no room for the invidious distinction spawned by *Betts* v. *Brady* is eloquently asserted in the special report of the Association of the Bar of the City of New York, *Equal Justice for the Accused*, *supra*, at 34:

> "[If] justice is to be equal and accessible for all, an opportunity must be provided by society for all accused, irrespective of their means, to have the help of an attorney. To do less than this is, in the opinion of the committee, inconsistent with the high ideals of our democratic society, which cannot tolerate one form of legal procedure for the rich and another for the poor."

III

The overruling of *Betts* v. *Brady* will significantly improve the administration of justice in the federal and state courts.

Overruling *Betts* v. *Brady* would reduce the incidence of appeal and collateral attack of state criminal convictions, both by eliminating the vast number of right-to-counsel cases and by minimizing trial errors which result from the lack of counsel and which justify appeal or collateral attack. The "special circumstances" rule of *Betts* v. *Brady* has congested both state and federal court dockets with complicated and time-consuming cases which require full review of state trial records. As a careful student of the subject has concluded, "the largest stumbling block in the administration of state criminal law is revealed as the non-

absolute right-to-counsel for indigents in noncapital cases." Reitz, *Federal Habeas Corpus; Post Conviction Remedy for State Prisoners*, 108 U. Pa. L. Rev. 461, 483 (1960). Overruling *Betts* v. *Brady* would also lessen the abrasive effect that the exercise of the habeas corpus power by the federal courts has had upon state systems of criminal justice.[8]

Available statistics indicate that there is a substantial number of prisoners who appeal or seek collateral review of their state criminal convictions on grounds that they have been denied counsel at trial. See Reitz, *supra*, 108 U. Pa. L. Rev. at 483. Moreover, each prisoner with a right-to-counsel claim may present it to the state and federal courts repeatedly—on direct appeal, on state collateral review, and, since *Moore* v. *Dempsey*, 261 U. S. 86 (1923), in a federal habeas corpus proceeding. Each time a review by certiorari may be sought in this Court. More difficult to estimate is the number of cases in which events occur at the trial, because of the absence of a defense lawyer, which later affords a basis of appeal or collateral attack.[9] Such cases probably add substantially to the dockets of the state and federal courts, including this Court.

The resources and judicial energy expended in disposing of these two types of cases is enormous and is increasing each year. For example, the number of habeas corpus petitions filed in the United States District Courts has grown

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[8] Although a rule that counsel is never required at trial would also eliminate right-to-counsel cases, no one would today argue that such a rule is consonant with the Due Process Clause.

[9] The State of Oregon in its *amicus* brief (p. 4) points out that in 15 of 20 cases in which relief was afforded under its recently enacted Post Conviction Relief Act, no attorney had represented the accused at the time the error was committed at the trial. See also Section C of its brief.

rapidly—from 127 in 1941[10] to 482 in 1951[10] and 871 in 1960.[11] There has also been a marked up-swing in such cases brought for review to the United States Court of Appeals and to this Court. During a 21/2 year period this Court disposed of 1234 cases involving state prisoners seeking review of state convictions, of which 1014 originated as collateral attacks on the state judgment.[12]

Overruling *Betts* v. *Brady* would sharply decrease the volume of cases in the courts of those states which persist in denying counsel at trial and are therefore bound by the confounding complexities of the "special circumstances" rule. Overruling *Betts* v. *Brady* would also remove from the lower federal courts a vast number of habeas corpus petitions and would radically reduce the number of petitions for certiorari to this Court.

Quite apart from relieving the federal courts of the sheer number of state criminal cases, overruling *Betts* v. *Brady* would also reduce the federal-state conflict inherent in the federal habeas corpus remedy. *Betts* has been a major—if not *the* major—cause of the proliferation of vexing habeas corpus cases. A substantial percentage of federal habeas corpus petitions have involved a right-to-counsel claim. In roughly one half of the thirty-five cases, over a period of approximately 10 years, in which a federal court ordered a state prisoner released in a habeas corpus proceeding, one of the grounds was that the accused had not been represented by counsel. In addition, many of the other errors in these cases—whether disqualification of a juror,

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[10] H. R. Rep. No. 1293, 85th Cong., 2nd Sess. 26 (1958).

[11] [1960] Administrative Office of the U. S. Courts Ann. Rep., printed in [1960] U. S. Judicial Conference Ann. Rep. 235.

[12] See Rodak and Spaniol, *Preliminary Report of a Study of the Dockets of the Supreme Court of the U. S. in Relation to Federal Habeas Corpus Jurisdiction* (March 1959, unpublished).

perjury or some other ground—could have been cured at the trial if a defense lawyer had been present, thus obviating resort to the writ of habeas corpus. See *Reitz, supra*, 108 U. Pa. L. Rev. at 481-87.

Accordingly, if *Betts* v. *Brady* had not been the law during the past decade, the number of federal habeas corpus cases involving maximum federal-state friction may well have been cut by more than half.

This vast increase in federal habeas corpus petitions, greatly accelerated by *Betts* v. *Brady*, has exacerbated federal-state relations and has led to the introduction in Congress of bills to limit the means and manner in which the federal courts may entertain the petitions from state prisoners. Prominent voices have been raised in support of these bills.[13] Such criticism is bound to depreciate the moral stature of the writ and to impair the complicated relationships within the federal judicial system. Abolishing the rule of *Betts* v. *Brady* would help to remove some of the opposition to federal habeas corpus jurisdiction.

In addition, overruling *Betts* v. *Brady* would enable the lower federal courts and this Court to focus attention on the broader legal problems involved in the exercise of federal habeas corpus jurisdiction rather than on the meticulous review of state court trial records, as required by the "special circumstances" rule.

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[13] For example, at almost all of its recent meetings the Conference of State Chief Justices adopted resolutions to restrain the "improper use of writs of habeas corpus by prisoners who have been convicted in state courts and who seek to have the action of state courts reviewed and reversed by lower federal courts." The late Chief Judge Parker, testifying on behalf of the Judicial Conference of the United States, recognized the "resentment on the part of The State judiciary against the action of the Federal judiciary." Hearings on H. R. 5649 Before Subcommittee No. 3 of the House Committee on the Judiciary, 84th Cong., 1st Sess., Ser. 6, at 7 (1955).

IV

The appointment of counsel for indigent defendants in criminal cases in a state court would not place an undue burden on local communities or on the bar.

In the court-martial cases decided in 1960, the Government contended that the lack of practical alternatives to military jurisdiction over civilians was an important factor which the Court had to consider in deciding the petitioners' constitutional claims. See *Kinsella* v. *United States ex rel Singleton*, *supra*, 361 U. S. at 243-44; *McElroy* v. *United States ex rel Guagliardo*, 361 U. S. 281, 287 (1960). Although the Court recognized that the cost to the Government to pursue alternatives to court-martial jurisdiction must be large, it stated that this cost "is the price the government must pay in order to comply with constitutional requirements." (361 U. S. at 287).

The situation presently before this Court is comparable; whatever cost is to be placed upon the state courts, local communities, and the bar must be borne as a result of the clear constitutional requirement that all indigent defendants in state criminal cases have a right to be furnished with counsel. In point of fact, however, a system of legal representation for indigent defendants can result in a social and even a financial cost saving.

In the first place, the lack of effective representation of indigent defendants in criminal cases creates a social cost of largely indeterminable but nevertheless real and serious proportions. No state can long afford to provide one standard of justice for the rich and another for the poor. Such a situation can only create a sense that the benefits of our judicial system can be enjoyed only by those who can pay for them. As the Attorney General recently stated, "If

justice is priced in the market place, individual liberty will be curtailed and respect for law diminished."[14]

Over and above the questions of social cost, a system of legal representation for indigent defendants may save a community more than it costs. Such a system reduces the burdens on the judiciary and prosecution from the flood of collateral post-conviction proceedings based on real or fancied trial injustices resulting from lack of trial counsel (see *supra*, pp. 30-32). And by helping to eliminate delays in the administration of justice, the prompt assignment of counsel sharply reduces detention and other costs presently borne by the state.

Furthermore, there is every indication that the 35 or more states which currently appoint counsel for indigent defendants as a matter of course easily meet the cost of providing adequate representation. Thus, Oregon has concluded that "it would provide greater protection of constitutional rights, and would be less expensive, to insist upon counsel in each original criminal proceeding than to attempt by a post-conviction proceeding to recover justice, lost by defects at the trial." Brief for State of Oregon as Amicus Curiae, p. 6.

The states that now require appointment of counsel are located in every geographic area of the country. The four basic systems that have been developed, and their success in the states employing them, suggest strongly that the practical implementation of at least one of these plans is well within the power of the 15 or fewer states that do not currently provide legal assistance to indigents. See, generally, *Equal Justice for the Accused*, *supra* at 47-52. The four systems are as follows:

1. *The Assigned Counsel.* Under this system, when a defendant appears at arraignment without counsel, the

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[14] R. F. Kennedy, Address before the House of Delegates American Bar Association, August 6, 1962.

judge assigns a lawyer to represent him. In capital cases, the assigned counsel is generally experienced and reasonable compensation is provided. The cost has not been high because of the relative infrequency of such cases. In non-capital cases most states do not provide a fee for assigned counsel. Thus, the cost to the community is kept to a minimum and the burden is placed upon the local bar.

An assigned counsel system, in which an adequate fee is paid for each assignment, is more expensive than a voluntary or a public defender system. For example, in Marin County, California, the cost of fees paid to assigned counsel was high enough to be a determining factor in the establishment of a public defender system. See *Equal Justice for the Accused*, *supra*, at 81. Whether or not the assigned counsel system provides for compensation, the burden upon the bar need not be heavy. The New Jersey assignment system, drawing upon the entire state bar, makes the assigned counsel plan systematic so that the burden is spread evenly and is well within the means of the bar. See Trebach, *A Modern Defender System for New Jersey*, 12 Rutgers L. Rev. 289 (1957).

2. *The Voluntary Defender.* Voluntary defender offices are generally privately controlled and supported by charity. A voluntary defender system may use salaried investigators or it may be aided by volunteers from private law offices or local law schools. Such a system is typical of the large urban centers in the East. Its cost to the community and the bar is minimal.

During the decade 1951-60, the National Legal Aid and Defender Association built up a professional membership of over 1200 lawyers working through over 130 local legal aid organizations. Legal Aid is a voluntary association totally reliant on gifts and contributions. Support that has come from charitable organizations, such as the Ford Foundation, and large industrial corporations, has greatly

lessened the burden on the public of providing adequate legal aid. See Brownell, *A Decade of Progress: Legal Aid and Defender Services*, 47 A.B.A.J. 867 (1961).

3. *The Public Defender.* Since a public defender is a public official, public funds are necessary to finance this means of providing counsel to indigent defendants. In some communities, particularly in the West, it has been found that a public defender system is more economical than an assigned counsel system and only 15 to 25% as expensive as the office of the public prosecutor. See *Equal Justice for the Accused*, *supra* at 81, 137. This is an expense which the large urban communities could easily bear.

A committee of the Judicial Conference of the United States, Judges Augustus N. Hand, Otto Kerner, Guy V. Bard and Eugene Rice, felt that the public defender system could advantageously be put to use even in sparsely settled districts. See Hearings Before the Subcommittee on the Study of Representation of Indigent Defendants in Federal Criminal Cases of the House Committee on the Judiciary, 83d Cong., 2d Sess. 32-37 (1954). As stated by former Attorney General Brownell (*id.* at 21):

> "[S]o long as there is to be government of and by law, we hold no doubt that the burden of prosecution is a community responsibility to be undertaken and paid for as a common expense. Equally the burden of providing a fair trial is upon the community. The right to representation is a concomitant of fair trial, and though it is personal to the defendant and may vary with his choice and means, it cannot be permitted to fail just because the accussed is a poor person. At that point the community must supply the deficiency."

4. *The Mixed Private-Public System.* This plan involves the use of charitable funds as in the Voluntary Defender System, and the use of public funds, as in the Public Defender System. Since part of the cost is borne by voluntary contributions, the direct cost to the public is smaller

than that of the Public Defender System. A defender is employed by the Legal Aid organization of the community and thus relieves the bar of its obligation. Although private participation may be limited to furnishing full time counsel as in Rochester and Buffalo, New York, a system may be provided, as in Puerto Rico, which receives direct appropriations from the legislature, funds and facilities from the Bar Association, and contributions from the public. See address by former Chief Justice A. Cecil Snyder of the Supreme Court of Puerto Rico before 34th Annual Meeting of The National Legal Aid Association, quoted in 14 (No. 2) The Legal Aid Brief Case 60-61 (1956).

Which system any particular community selects will depend, of course, upon its type and size, the number of indigents accused of crime, conditions within the local bar, the probable cost to the community, and the capacity to meet this cost. Many specialized organizations, such as the National Legal Aid Society and the Voluntary Defender Association, can furnish detailed information to any community faced with the need to establish a system to provide counsel for indigent defendants.[15]

In those states which as yet do not employ any of the available systems of assigning counsel to poor people accused of crime, the members of the local bar no doubt are as willing to assume their professional responsibilities as their colleagues in states that require the assignment of counsel. As already noted, the cost to the community of establishing a method of assigning counsel is minimal; the cost to the community in refusing to provide for representation of indigent defendants is incalculable.

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[15] Maryland has recently enacted a new Post Procedure Conviction Act (Code, 1958 Supp. Art. 27, § 645A-J), which requires appointment of counsel for all indigent prisoners utilizing the procedural remedies outlined in the Act. See *Byrd* v. *Warden, Md. Penitentiary*, 219 Md. 681, 147 A. 2d 701 (1959). Presumably, the procedure for appointment of counsel for indigent *prisoners* could be applied without difficulty to indigent *defendants*.

V

The constitutional development of the exclusionary rule in search and seizure cases, culminating in *Mapp* v. *Ohio*, is a compelling historical model for requiring the appointment of counsel in all criminal cases.

Only two terms ago, this Court in *Mapp* v. *Ohio*, 367 U. S. 643 (1961), re-examined the relationship between the Fourteenth Amendment and the Fourth Amendment. It held that the Fourteenth Amendment incorporated not only the abstract right to be free from unreasonable searches and seizures, but also the rule, applicable under the Fourth Amendment, which requires the exclusion of evidence so seized. Similarly, the Court should hold in this case that the Fourteenth Amendment incorporates from the Sixth Amendment not only the abstract right to counsel, but also the rule applicable in federal courts under the Sixth Amendment that a lawyer must be appointed to assist a defendant unable to provide his own.

The question of obligatory exclusion of evidence at state trials was first raised in *Wolf* v. *Colorado*, 338 U. S. 25 (1948). In that case the Court held (*id.* at 27-28):

> "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause."

Despite this ruling, the Court in *Wolf* refused to require illegally seized evidence to be excluded at trial. It reached this result even though in *Weeks* v. *United States*, 232 U. S. 383 (1914), it had held that, in a federal prosecution, the exclusionary rule would be judicially implied as part of the fundamental core of the Fourth Amendment. The conclusion that the Constitution required the same result as to state trials was ultimately drawn in the *Mapp* case, in

which the Court, in overruling *Wolf*, held that "[s]ince the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government" (367 U. S. at 655).

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defense." In *Powell* v. *Alabama*, *supra*, the Court concluded that the right of assistance of counsel was of a fundamental character, applicable to the states through the Due Process Clause of the Fourteenth Amendment (287 U. S. at 68). But how was this fundamental right of assistance of counsel to be enforced?

That question was soon to be decided, in essence, by the Court in *Johnson* v. *Zerbst*, 304 U. S. 458 (1938), which reanalyzed the basic principles enunciated in the *Powell* case and concluded that "[t]he Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel" (*id.* at 463). Thus, just as the Court in *Weeks* had required the application of the exclusionary rule in federal cases, so the Court in *Johnson* judicially implied as part of the fundamental core of the Sixth Amendment the appointment of counsel for all indigent defendants in federal cases. Significantly, in both instances the conclusion was not based merely upon the express language of the Constitutional provisions. As the Court observed in *Bute* v. *Illinois*, *supra*, 333 U. S. at 660-661:

> "[U]ntil the decision * * * in *Johnson* v. *Zerbst* * * *, there was little in the decisions of any courts to indicate that the practice in the federal courts, except in capital cases, required the appointment of counsel to assist the accused in his defense, as contrasted

with the recognized right of the accused to be represented by counsel of his own if he so desired."

Despite the fact that the right to appointed counsel had been read into the core of the Sixth Amendment, the Court in *Betts* v. *Brady, supra*, failed to apply the same reasoning to the Fourteenth Amendment, just as the Court in *Wolf* had failed to apply the reasoning in *Weeks* to an unconstitutional search and seizure under the Fourteenth Amendment.

Mapp v. *Ohio* held that the failure to apply the exclusionary rule to state cases had been error. So also, it is submitted, the "special circumstances" rule is fundamentally wrong. Since the right of an indigent to have counsel appointed is an essential part of the right to assistance of counsel under the Sixth Amendment, as recognized by this Court in *Johnson* v. *Zerbst, supra*, it should also be insisted upon as an essential ingredient of the right to assistance of counsel under the Fourteenth Amendment. To hold otherwise is to grant the form of assistance of counsel, but in reality to withhold its enjoyment in substance by all indigent defendants.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of Florida should be reversed and the cause remanded to the Circuit Court of Bay County with instructions to grant petitioner a new trial at which counsel is appointed on his behalf.

Respectfully submitted,

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November, 1962.

APPENDIX I

State Requirements Regarding Appointment of Counsel

In 1961, Mr. Justice Douglas appended to his concurring opinion in *McNeal* v. *Culver*, 365 U. S. 109, 119 (1961), a compilation of the laws of the states regarding the right to appointment of counsel. This Appendix brings that classification to date. We find that the constitution, statutes or rules of court in thirty-five states provide for the appointment of counsel on behalf of an indigent in any felony case as a matter of course; fifteen states either make no explicit provisions in their constitution, statutes or rules of court for appointment of counsel in all felony cases or make provision only in capital cases and leave the appointment of counsel to the discretion of the trial judge in other felony cases. However, in at least six of the latter fifteen states, namely, Delaware, Hawaii, Maine, New Hampshire, Rhode Island and Vermont, there appears to be a practice to appoint counsel for indigent defendants in all felony cases. See Kamisar, *The Right to Counsel and the Fourteenth Amendment: A Dialogue on "The Most Pervasive Right of an Accused,"* Appendix I, to be printed in 30 U. Chi. L. Rev. No. 1 (1962). This is borne out by the relative infrequency of cases dealing with the problem in these six states. See table, Appendix II, pp. 48-49 *infra*.

A. Appointment of Counsel for Indigents in All Felony Cases, as of Course, by Force of the State Constitution, Statutes, Court Rule, or Judicial Decision.

Alaska:	Rules of Criminal Procedure, Rule 39(b).
Arizona:	Rules of Criminal Procedure, Rule 163.
Arkansas:	Ark. Stat. § 43-1203.
California:	Calif. Penal Code § 987.
Connecticut:	Gen. Stat. of Conn. (1958 Rev.) § 54-80. See *State* v. *Reid*, 149 A. 2d 698 (1959).

Georgia:	Ga. Const., Art. 1, § 1, Par. V (Ga. Code Ann. § 2-105). See *Bibb County* v. *Hancock*, 86 S. E. 2d 511 (1955).
Idaho:	Idaho Code Ann. §§ 19-1512, 19-1513.
Illinois:	Ill. Supreme Court Rules, Rule 26(2), Ill. Rev. Stat. (1959), c. 110, §101.26(2).
Indiana:	Ind. Const., Art. I, § 13. See *State ex rel. Grecco* v. *Allen Circuit Court*, 153 N. E. 2d 914 (1958).
Iowa:	Iowa Code Ann. § 775.4.
Kansas:	Gen. Stat. of Kansas (1961 Supp.) § 62-1304.
Kentucky:	Ky. Const., § 11; Ky. Rev. Stats. 1960 § 455.010. See *Calhoun* v. *Commonwealth*, 193 S. W. 2d 420 (1946).
Louisiana:	La. Rev. Stat. § 15-143.
Massachusetts:	Rule 10, General Rules of the Supreme Judicial Court of Massachusetts, 337 Mass. 813; Ann. Laws of Mass., c. 221, § 34D; c. 277, § 47.
Minnesota:	Minn. Stat., 1959, § 611.07.
Missouri:	Mo. Rev. Stat., 1959, § 545.820; Rule 29.01, Supreme Court Rules, Mo. Rev. Stat., 1959.
Montana:	Rev. Code of Montana § 94-6512.
Nebraska:	Rev. Stat. of Nebraska (1959 Cum. Supp.) § 29-1803.
Nevada:	Nev. Rev. Stat. § 174.120.
New Jersey:	N. J. Const., Art. I, Para. 10; Rev. Rules, § 1:12-9.

New Mexico:	N. M. Stat. Ann. (1953 Comp.) § 41-11-2. Cf. Const., Art. II, § 14; see *State* v. *Garcia*, 142 P. 2d 552 (1943).
New York:	N. Y. Code of Criminal Procedure § 308.
North Dakota:	N. D. Century Code § 29-01-27, 29-13-03.
Ohio:	Ohio Rev. Code § 2941.50.
Oklahoma:	22 Okla. Stat. § 464.
Oregon:	Ore. Rev. Stat. § 135.320.
South Dakota:	S. D. Code § 34.3506; S. D. Code (1960 Supp.) § 34.1901.
Tennessee:	Tenn. Code §§ 40-2002, 40-2003.
Texas:	Vernon's Texas Code of Criminal Procedure § 494, as amended by Acts 1959, 56th Leg., p. 1061, c. 484, § 1.
Utah:	Utah Code Ann. § 77-22-12.
Virginia:	Code of Va. § 19.1-241.
Washington:	Rev. Code of Wash. § 10.01.110.
West Virginia:	Rules of Practice for Trial Courts, Rule IV.
Wisconsin:	*Carpenter & Sprague* v. *Dane County*, 9 Wis. 274 (1859). See Wis. Stat. Ann. § 957.26.
Wyoming:	Wyo. Stat. § 7-7.

B. States Not Making Provision for Appointment of Counsel for Indigents in All Felony Cases.

Alabama:	Code of Ala., Tit. 15, § 318 (capital cases). See *Gilchrist* v. *State*, 173 So. 651 (1937).
Colorado:	Colo. Rev. Stat. § 39-7-29. See *Kelley* v. *People*, 206 P. 2d 337, cert. denied, 338 U. S. 880 (1949).

Delaware:	Superior Court Rules—Criminal Rule 44 (capital cases and "any other case in which the court deems it appropriate").
Florida:	Fla. Stat. § 909.21 (capital cases). See *Watson* v. *State*, 194 So. 640 (1940).
Hawaii:	Rev. Laws of Hawaii (1960 Supp.) § 253-5.
Maine:	Me. Rev. Stat., c. 148, § 11 (capital cases and where sentence of life imprisonment may be imposed, otherwise permissive).
Maryland:	Md. Rules of Procedure, Criminal Causes, Rule 723, § b (in all capital cases and other "serious cases").
Michigan:	Mich. Comp. Laws, 1948, § 775.16, as amended by Public Acts 1957, No. 256. See *People* v. *Williams*, 195 N. W. 818 (1923).
Mississippi:	Miss. Code Ann. (rec. 1956) § 2505 ("capital crime").
New Hampshire:	N. H. Rev. Stat. §§ 604:1, 604:2 (capital crimes or other cases where "injustice may be done if provision is not made therefor").
North Carolina:	N. C. Gen. Stat. § 15-4.1. See *State* v. *Davis*, 103 S. E. 2d 289 (1958).
Pennsylvania:	Purdon's Pa. Stat., Tit. 19, §§ 783, 784 (capital cases).
Rhode Island:	Gen. Laws of Rhode Island § 12-15-3.
South Carolina:	S. C. Code of Laws § 17-507 (capital cases). See *State* v. *Hollman*, 102 S. E. 2d 873 (1958).
Vermont:	13 Vt. Stat. Ann. § 6503. See *State* v. *Gomez*, 96 A. 190 (1915).

APPENDIX II

Decisions of State Courts Regarding Right to Appointment of Counsel in Noncapital Cases

Since this Court's decision in *Betts v. Brady*, 139 cases have been found which review a state court's determination whether special circumstances existed requiring the appointment of counsel at trial. These decisions consist of the following: (1) reported state court decisions from those states not requiring appointment of counsel in noncapital cases expressly passing upon the application of the special circumstances rule; (2) decisions in this Court affirming or reversing prior unreported state court decisions raising the question of lack of counsel at trial; and (3) other federal court decisions passing upon habeas corpus petitions which refer to prior unreported state court decisions. Cases from states which now require appointment of counsel are not included.

The cases may be broken down according to the following table:

State	Direct appeals from original conviction	State Post-conviction proceedings	Total State cases	State decisions finding special circumstances	Remands for hearing	State decisions finding no special circumstances
Ala.	6	1	7	0	0	7
Colo.	0	3	3	0	0	3
Fla.	4	13	17	1	1	15
Maine	1	0	1	0	0	1
Md.	4	34	38	3	0	35
Mich.	3	6	9	2	0	7
Miss.	7	1	8	2	0	6
N. H.	0	1	1	0	0	1
N. C.	5	3	8	2	0	6
Penna.	2	42	44	1	3	40
R. I.	0	1	1	0	0	1
S. C.	2	0	2	0	0	2
Del., Hawaii, Vt.	0	0	0	0	0	0
	34	105	139	11	4	124

State	Petition for certiorari filed in U. S. Sup. Ct	Certiorari granted	State decision reversed	State decision affirmed	Special circumstances found on federal habeas corpus	Special circumstances not found on federal habeas corpus
Ala.	3	0	0	0	0	0
Colo.	3	0	0	0	1	0
Fla.	5*	4*	3	0	1	0
Maine	0	0	0	0	0	0
Md.	4	0	0	0	0	0
Mich	6	3	2	1	1	1
Miss.	2	0	0	0	0	0
N. H.	0	0	0	0	0	0
N. C.	2	1	1	0	0	0
Penna.	17	6	5	1	1	1
R. I.	0	0	0	0	0	0
S. C.	0	0	0	0	0	0
Del., Hawaii, Vt.	0	0	0	0	0	0
	42	14	11	2	4	2

* Includes present case.

Cases in Which Special Circumstances Found by State Court

Fla.

*Asbey v. State, 102 So. 2d 407 (1958)

Md.

*Hill v. State, 145 A. 2d 445 (1958)
Raymond v. State, 65 A. 2d 285 (1949)
*Jewett v. State, 58 A. 2d 236 (1948)

Mich.

People v. Whitsitt, 103 N. W. 2d 424 (1960)
People v. Coates, 81 N. W. 2d 411 (1957)

Miss.

Walters v. Ernest, 106 So. 2d 137 (1958)
*Gray v. State, 78 So. 2d 588 (1955)

N. C.

*State v. Simpson, 90 S. E. 2d 708 (1956)
*State v. Wagstaff, 68 S. E. 2d 858 (1952)

Pa.

*Comm. v. Strada, 90 A. 2d 335 (1952)

Cases in Which Hearing on Defendants' Allegations Ordered by State Court

Fla.

Sneed v. Mayo, 66 So. 2d 865 (1953)

Pa.

Commonwealth ex rel. Wagner v. Tees, 101 A. 2d 770 (1953)
Commonwealth ex rel. Dote v. Burke, 96 A. 2d 151 (1953)
Commonwealth ex rel. Hice v. Ashe, 70 A. 2d 479 (1950)

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* Asterisks refer to cases presented to state appellate court on direct appeal from original conviction.

Cases in Which No Special Circumstances Found by State Court

Ala.

*Atrip v. State, 136 So. 2d 574 (1962)
*Pogoliek v. State, 141 So. 2d 296 (1962)
*Allen v. State, 132 So. 2d 327 (1961), cert. denied, 368 U. S. 1001 (1962)
*Wilson v. State, 87 So. 2d 447 (1956)
*Smith v. State, 38 So. 2d 287 (1947)
*Cook v. State, 22 So. 2d 924 (1945), cert. denied, 22 So. 2d 925 (1945)
Mackreth v. Wilson, 15 So. 2d 112 (1943), cert. denied 15 So. 2d 114 (1943), cert. denied, 321 U. S. 772 (1944)

Colo.

Freeman v. Tinsley, 308 P. 2d 220 (1957), cert. denied, 355 U. S. 843 (1957)
Kelley v. People, 206 P. 2d 337 (1949), cert. denied, 338 U. S. 880 (1949)
See Garton v. Tinsley, 171 F. Supp. 387 (D. Colo. 1959) (special circumstances found on federal habeas corpus)

Fla.

Denton v. Cochran, 131 So. 2d 734 (1961)
Dover v. Cochran, 126 So. 2d 139 (1961)
*Horoshko v. State, 135 So. 2d 865 (1961)
Carnley v. Cochran, 123 So. 2d 249 (1960), rev'd 369 U. S. 506 (1962)
Jones v. Cochran, 121 So. 2d 657 (1960), 125 So. 2d 99 (1960)
Butler v. Culver, 111 So. 2d 35 (1959)
Cash v. Culver, original unreported state court decision denying writ of habeas corpus rev'd, 358 U. S. 633 (1959); subsequently hearing ordered, 120 So. 2d 590 (1960), new trial ordered 122 So. 2d 179 (1960)

McNeal v. Culver, 113 So. 2d 381 (1959), reversed and remanded, 365 U. S. 109 (1961), new trial ordered, 132 So. 2d 151 (1961)
McMahon v. Mayo, 92 So. 2d 806 (1957)
*Sheffield v. State, 90 So. 2d 449 (1956)
*McAfee v. State, 46 So. 2d 455 (1950)
Johnson v. Mayo, 40 So. 2d 134 (1949)
Johnson v. Mayo, 28 So. 2d 585 (1946), cert. denied, 329 U. S. 804 (1947)
See Wade v. Mayo, 334 U. S. 672 (1948) (special circumstances found on federal habeas corpus)
See Gideon v. Cochran (R. 47)

Maine

*Pike v. State, 123 A. 2d 774 (1956)

Md.

*Patterson v. State, 175 A. 2d 746 (1961)
Lishure v. Warden, Md. Penitentiary, 156 A. 2d 435 (1959)
*Roberts v. State, 150 A. 2d 448 (1959)
Brown v. Warden, Md. House of Correction, 145 A. 2d 280 (1958)
Woolford v. Warden, Md. House of Correction, 137 A. 2d 646 (1958)
Fairbanks v. Warden, Md. House of Correction, 132 A. 2d 108 (1957)
Marvin v. Warden, Md. Penitentiary, 129 A. 2d 85 (1957)
Thompson v. Warden, Md. House of Correction, 136 A. 2d 909 (1957), cert. denied, 356 U. S. 943 (1958)
Young v. Warden, Md. House of Correction, 129 A. 2d 71 (1957)
Chavez v. Warden, Md. Penitentiary, 125 A. 2d 669 (1956)
Shaffer v. Warden, Md. House of Correction, 126 A. 2d 573 (1956)

Dowling v. Warden of Md. House of Correction, 127 A. 2d 136 (1956)

Chamell v. Warden of Md. House of Correction, 125 A. 2d 672 (1956)

Tibbs v. Warden of Md. House of Correction, 123 A. 2d 353 (1956)

Walker v. Warden of Md. House of Correction, 121 A. 2d 714 (1956)

Wilson v. Warden, Md. House of Correction, 121 A. 2d 695 (1956)

Truelove v. Warden of Md. House of Correction, 115 A. 2d 297 (1955)

France v. Warden of Md. House of Correction, 109 A. 2d 65 (1954), cert. denied, 348 U. S. 955 (1955)

Frazier v. Warden of Md. Penitentiary, 109 A. 2d 78 (1954)

Spence v. Warden of Md. House of Correction, 103 A. 2d 345 (1954)

Daisey v. Superintendent, Md. House of Correction, 98 A. 2d 99 (1953)

State ex rel. De Lisle v. Warden, Md. Penitentiary, 98 A. 2d 15 (1953)

Martucci v. Warden, Md. House of Correction, 96 A. 2d 490 (1953)

Pridgen v. Warden, Md. Penitentary, 92 A. 2d 455 (1952)

Selby v. Warden of Md. House of Correction, 92 A. 2d 756 (1952)

Knott v. Warden, Md. House of Correction, 90 A. 2d 177 (1952), cert. denied 344 U. S. 847 (1952)

Williams v. Warden, Md. House of Correction, 89 A. 2d 228 (1952)

Langrehr v. Warden, 84 A. 2d 61 (1951)

State ex rel. Loane v. Warden of Md. Penitentiary, 75 A. 2d 772 (1950)

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